

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-219732

DATE: October 8, 1985

MATTER OF: L. H. Morris Electric Inc.

## DIGEST:

1. A bidder is responsible for receipt of amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing. Where no such effort is shown, a bid that fails to acknowledge a material amendment is properly rejected as nonresponsive.
2. Bid's failure to acknowledge an amendment adding terms necessary to meet local legal requirements for construction project may not be waived as being trivial since the terms are necessary to meet county requirements and there is no showing that those requirements could be met by severing and procuring anew a negligible portion of the project.
3. Negotiations are not permitted in a procurement using sealed bidding.

L. H. Morris Electric Inc. (Morris) protests the rejection of its low bid as nonresponsive for failure to acknowledge an amendment to invitation for bids (IFB) DTFA 11-85-B-00167, issued by the Federal Aviation Administration (FAA) for the construction of runway improvements at the Corvallis Municipal Airport in Benton County, Oregon.

The protest is denied.

Amendment No. 1 to the IFB included three drawings that required an additional crushed rock walkway, the installation of a disconnect switch and conduit risers on wood posts, the addition of two extra inches of asphalt to driveway connections, the use of 24-inch rather than a 30-inch steel pipe under the county road and the construction of culverts that are 12-inches by 28-feet of concrete rather than 12-inches by 20-feet of corrugated metal. According to

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FAA, most of the changes were made to meet county legal requirements for driveway connections to county roads and for certain types of culverts.

Five bids were received in response to the IFB, ranging from Morris' low bid of \$47,987 to \$84,326. The next low bid was \$63,209. Morris clearly indicated on its bid that it had received no amendment. The other four bidders acknowledged receipt of the amendment. The FAA, estimating that the amendment's changes will cost an additional \$1,400, determined that the amendment involves requirements that are material as to price and quality, and rejected Morris' bid because it failed to acknowledge the amendment.

Morris alleges that it never received the amendment, and that the amendment would not have affected its price. Further, Morris contends that the FAA, before rejecting the bid, should have conducted discussions regarding the impact of the amendment on price.

It is well established that a bidder bears the risk of not receiving IFB amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing. TCA Reservations, Inc., B-218615, Aug. 13, 1985, 85-2 CPD ¶ 163; Triple A Shipyards, B-218079, Feb. 6, 1985, 85-1 CPD ¶ 149. Where a bid fails to acknowledge a material amendment, the bid is nonresponsive and generally must be rejected since the government's acceptance of the bid would not legally obligate the bidder to meet the terms of the amendment. Power Service, Inc., B-218248, Mar. 28, 1985, 85-1 CPD ¶ 374.

We believe the amendment here is material since its terms are necessary to meet county legal requirements, and there is no showing that those requirements otherwise can be met by severing and procuring anew a negligible portion of the project. See Leslie & Elliott Co., B-216676, Feb. 19, 1985, 64 Comp. Gen. 279, 85-1 CPD ¶ 212, aff'd, Ryan Electric Co.--Reconsideration, B-218246.2, Apr. 1, 1985, 85-1 CPD ¶ 366. The FAA determined that the impact is material, and Morris has not rebutted that determination. Under these circumstances, we agree with FAA's determination.

Regarding Morris' willingness to comply with the amendment's requirements at no cost, the government may not permit a bidder after bid opening to cure the failure to acknowledge a material amendment. Grade-Way Constr. v. United States, 7 Cl. Ct. 263 (1985). A bidder's intention to comply with the material terms of an IFB must be manifest

from the bid itself and may not be provided by explanations after bid opening. TCA Reservations, Inc., B-218615, supra. Since Morris' bid did not reflect its intention to be bound by the material construction changes, it was properly rejected as being nonresponsive.

Finally, with regard to Morris' contention that discussions should have been conducted, we note that negotiations are not permitted in a procurement using sealed bidding. See W.M. Grace, Inc., B-197192, Jan. 10, 1980, 80-1 CPD ¶ 33.

The protest is denied.

*for Seymour E. Fox*  
Harry R. Van Cleve  
General Counsel